

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Michael Downes et al.  
Title: NON-STEROIDAL FARNESOID  
X RECEPTOR MODULATORS  
AND METHODS FOR THE USE  
THEREOF  
Appl. No.: 10/535,043  
Filing Date: 5/13/2005  
371 (c) Filing Date: 12/09/05  
Examiner: Zarek, Paul  
Art Unit: 1617  
Confirmation Number: 2033

**APPLICATION FOR PATENT TERM ADJUSTMENT**

**UNDER 37 C.F.R. §1.705**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the patent term adjustment (PTA) of 459 days as indicated on the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) mailed on July 23, 2009. The total PTA should be 999 days as determined below.

Upon review of the Patent Term Adjustment History using the Patent Application Information Retrieval (PAIR) database, Applicants note an inaccuracy of 540 days. The

Applicant delay is correctly identified as 90 days. However, PTO delay is incorrectly identified as 549 days coming from:

(a) 549 days (from "14 months from application date" on February 9, 2007 to PTO action of "Non-Final Office Action" on August, 11, 2008).

In addition to the PTO delays identified above in (a), Applicants should be credited with an additional 628 days from May 15, 2008 (the three year pendency date) to February 2, 2010 (the Projected Patent Grant Date, six and one half months from the time of mailing of the Notice of Allowance). Applicants note that the 88 days of PTO delay identified above in (a) occur after the three year pendency date and are thus contained within these 628 days.

#### **EXPLANATION**

The present application was filed based on PCT international application PCT/US2003/036137 which has national stage commencement date of May 15, 2005. The three year period to end prosecution expires no later than May 15, 2008. In view of the projected patent grant date of February 02, 2010, **628 days** beyond May 15, 2008 should be charged to PTO delay. As listed above, currently only 88 days of PTO delay are charged after May 15, 2008. Thus, Applicants should be credited with an additional 540 days of PTO delay ( $628 - 88 = 540$ ).

Therefore, the net Patent Term Adjustment should be **999 days** ( $549 + 628 - 88 = 1089$  USPTO days  $- 90$  Applicant days). Accordingly, it is respectfully requested that the total patent term adjustment of **999 days** be issued in favor of the Applicants.

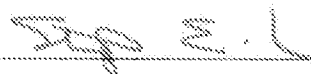
It is further requested that the fee of \$200.00 be waived in light of the above circumstances. However, if the Patent Office determines that the fee is required, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

In the event any matters remain to be resolved in view of this communication, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application for patent term adjustment can be achieved.

Applicants request further that a decision on this request be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date: August 31, 2009



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